

FEDERAL CIRCUIT COURT OF AUSTRALIA

*LAMICHHANE v MINISTER FOR
IMMIGRATION & ANOR*

[2018] FCCA 2118

Catchwords:

MIGRATION – Partner (residence) (class BS) (subclass 801) visa – applicant not in a genuine and continuing relationship with his sponsor as required by the visa he held – tribunal gave active, intellectual consideration to applicant’s claims – tribunal addressed each element of the regulations relevant to the grant of the visa – tribunal’s findings open to it – all grounds of review failed – many grounds lacked particulars – application dismissed.

Legislation:

Migration Act 1958, ss.5CB, 5F, 359A

Migration Regulations 1994, reg.1.15A, sch.2, cl.801.221

Cases cited:

Appellant S395/2002 v Minister for Immigration and Multicultural Affairs (2003) 216 CLR 473

AQN15 v Minister for Immigration & Anor [2016] FCCA 58

ARG15 v Minister for Immigration and Border Protection (2016) 250 FCR 109

Attorney-General (NSW) v Quin (1990) 170 CLR 1

Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321

BHK15 v Minister for Immigration and Border Protection [2016] FCA 569

BZD17 v Minister for Immigration and Border Protection [2018] FCAFC 94

Chan Yee Kin v Minister for Immigration and Ethnic Affairs (1989) 169 CLR 379

CQG15 v Minister for Immigration and Border Protection (2016) 253 FCR 496

DAO16 v Minister for Immigration and Border Protection [2018] FCAFC 2

He v Minister for Immigration and Border Protection [2017] FCAFC 206

Islam v Cash [2015] FCA 815

Minister for Immigration and Border Protection v Singh [2014] FCAFC 1

Minister for Immigration and Citizenship v Li and Anor (2013) 249 CLR 332

Minister for Immigration and Citizenship v SZGUR (2011) 241 CLR 594

Minister for Immigration and Citizenship v SZJSS (2010) 243 CLR 164

Minister for Immigration and Citizenship v SZMDS (2010) 240 CLR 611

Minister for Immigration and Citizenship v SZRKT (2013) 212 FCR 99

Minister for Immigration and Ethnic Affairs v Wu Shan Liang (1996) 185 CLR 259

Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S154/2002 [2003] HCA 60

Symons v White (Sydney Catholic Schools) [2018] FCA 949

WZATH v Minister for Immigration and Border Protection [2014] FCA 969
WZAVW v Minister for Immigration and Border Protection [2016] FCA 760

Applicant:	DEEPAK LAMICHHANE
First Respondent:	MINISTER FOR IMMIGRATION & BORDER PROTECTION
Second Respondent:	ADMINISTRATIVE APPEALS TRIBUNAL
File Number:	SYG 75 of 2017
Judgment of:	His Honour Judge Wilson
Hearing date:	31 July 2018
Date of Last Submission:	31 July 2018
Delivered at:	Perth
Delivered on:	31 July 2018

REPRESENTATION

Counsel for the Applicant: Mr J R Young

Solicitors for the Applicant: Shamser Thapa & Associates

Counsel for the First Respondent: Mr N Swan

Solicitors for the First Respondent: DLA Piper Australia

Counsel for the Second Respondent: No appearance

Solicitors for the Second Respondent: DLA Piper Australia

ORDERS

- (1) The application filed on 11 January 2017 is dismissed.
- (2) The applicant pay the first respondent's costs in the fixed sum of \$7 206.
- (3)

FEDERAL CIRCUIT COURT

OF AUSTRALIA

AT PERTH

SYG 75 of 2017

DEEPAK LAMICHHANE

Applicant

And

MINISTER FOR IMMIGRATION & BORDER PROTECTION

First Respondent

And

ADMINISTRATIVE APPEALS TRIBUNAL

Second Respondent

REASONS FOR JUDGMENT

(ex tempore)

Introduction

1. By application filed on 11 January 2017, the applicant sought judicial review of a decision of the Administrative Appeals Tribunal dated 19 December 2016. The tribunal affirmed a decision of the delegate of the minister not to grant the applicant a partner (residence) (class BS) (subclass 801) visa. In essence, the tribunal took the view that the applicant was not in a spousal relationship with the consequence that

the applicant failed to meet the criteria of cl 801.221(2)(c) of sch 2 to the *Migration Regulations* (“regulations”).

2. In this application, the applicant contended that the tribunal’s decision was vitiated by jurisdictional error. He argued that the tribunal’s decision was irrational, capricious and unreasonable, that the tribunal adopted a legally erroneous test of marriage, that the tribunal failed to consider critical corroborative evidence, that the tribunal failed to have regard to the mandatory requirements of reg 1.15A of the regulations, that the tribunal engaged in apprehended bias, that the tribunal erroneously regarded certain matters as prerequisite considerations and that the tribunal failed to comply with s 359A of the *Migration Act* (“Act”).
3. In the applicant’s written submissions, his counsel stated that the applicant did not press grounds six and eight. That left grounds one, two, three, four, five and seven.

Synopsis

4. For the reasons that follow, in my judgment the application for judicial review in this case should be dismissed. The applicant must pay the minister’s costs.

Short factual recital

5. The applicant is a citizen of Nepal born in August 1982. On 28 December 2012, the applicant applied for a partner (residence) (class BS) visa. He applied for the visa on the basis of his relationship with his sponsor, Ms Kripa Rana, also a Nepali citizen. The applicant and the sponsor asserted that they married on 26 September 2012. A copy of their marriage certificate was produced at page 95 of the court book.
6. The applicant lodged an application for a partner (temporary) (class UK) (subclass 820) visa and a partner (residence) (class BS) (subclass 801) visa on 9 January 2013. The applicant was granted a subclass 820 visa on 18 December 2013. The minister’s delegate refused the applicant the subclass 801 visa on 19 November 2015.

7. In essence, the delegate refused the application for the subclass 801 visa because –
 - a) the applicant provided minimal information to support his claims that he was in a genuine and ongoing spousal relationship;
 - b) the applicant was unable to provide an insight into the nature of his household or social and financial aspects of his relationship;
 - c) the applicant was unable to demonstrate a degree of companionship and emotional support between him and his sponsor or that the applicant saw the relationship as being long-term; and
 - d) the applicant was not in a genuine and continuing relationship with his sponsor as required by s 5F(2)(c) and by s 5CB(2)(b) of the Act with the consequence that the delegate was not satisfied that the applicant met the legislative requirement for the grant of a subclass 801 visa as specified in cl 801.221 of sch 2 of the regulations.
8. On 24 November 2015, the applicant applied electronically to the Administrative Appeals Tribunal for a merits review of the delegate's decision, which application the tribunal acknowledged receiving on 25 November 2015.
9. On 6 October 2016, the tribunal invited the applicant to appear before it and to give evidence and to present argument on 5 December 2016. By email dated 28 November 2016, the applicant's migration agent informed the tribunal that the applicant and the sponsor would be attending. On the response to hearing invitation that the applicant signed, he stated an interpreter was not needed.
10. On 28 November 2016, the applicant's migration agent also provided the tribunal with submissions and documents in support of the applicant's claim. The documentation included –
 - a) the applicant's statutory declaration;
 - b) a copy of a residential tenancy agreement;
 - c) telephone and electricity account details;

- d) bank statements;
 - e) an application for and approval of a home loan;
 - f) medical referral documentation;
 - g) photographs; and
 - h) documentation relating to the sponsor's study commitments.
11. The hearing was duly convened before the tribunal on 5 December 2016. The minister's solicitors filed an affidavit affirmed on 1 September 2017 to which he exhibited a transcript of the hearing before the tribunal. Before addressing the reasoning of the tribunal and the findings of fact that it made, it is relevant to point out some of the more important exchanges between the applicant, the sponsor and the tribunal, especially as they bear upon the grounds of review on which the applicant relied.
12. The tribunal heard from the applicant as well as the sponsor. The hearing commenced at 8:32am and concluded at 10:35am. The tribunal gave the applicant until 16 December 2016 to provide such further evidence as he wished in support of his application for the subclass 801 visa. On 14 December 2016, the applicant's migration agent provided a further statutory declaration of the applicant and one from the sponsor, medical documents as well as two letters from persons who expressed views about the genuineness of the relationship between the applicant and the sponsor.

The hearing in the tribunal

13. As has been observed above, the tribunal hearing went for over two hours. The member questioned the applicant about an array of matters that went to the criteria in cl 801.221, to the elements of the definition of “spouse” in s 5F of the Act and the matters in reg 1.15A of the regulations, although the member did not say, in terms, that she was pursuing answers with a view to assessing compliance or otherwise with those provisions. The member questioned the applicant about –
- a) the amount of rent he and the sponsor paid each week in rental being \$595 yet the sponsor’s sister and husband did not pay any rent;
 - b) the sponsor transferred rental payments on Saturdays usually;
 - c) the applicant worked as a pharmacist assistant and at a supermarket as a service person;
 - d) he obtained a pharmacy III certificate the month prior to the tribunal hearing;
 - e) at the supermarket he was ordinarily paid at the casual rate of \$22 per hour and on Sundays at the rate of \$28 per hour;
 - f) the sponsor worked in sales usually 38 hours per week prior to which she was in hairdressing;
 - g) he planned to move to Melbourne but he was still at planning phase;
 - h) he arrived in Australia on a student visa studying a master’s degree in professional accounting;
 - i) he met the sponsor in 2010 after which they saw each other when they had days off work when he would go to the sponsor’s house or go shopping, a pattern that happened continuously for two years then the applicant and the sponsor decided to marry in 2012;
 - j) the applicant and the sponsor came from different castes so the applicant did not tell his family of his marriage and still had not;

- k) the applicant did not know what his family thought he was doing in Australia;
- l) he sometimes sends money to his mother;
- m) as a couple the applicant and the sponsor sometimes watched a movie together and they sometimes went shopping at a supermarket;
- n) so far as finances were concerned he said that for a long time the applicant had his money and the sponsor had her money;
- o) together they had about \$70 000 to \$80 000 in savings or maybe \$40 000 to \$50 000;
- p) Commonwealth Bank had given them a loan;
- q) the applicant did not spend time with friends;
- r) he travelled to Nepal without the sponsor;
- s) he wants one child although the applicant and the sponsor are not actually trying to have a child;
- t) the applicant had not accompanied the sponsor to see a doctor for her medical condition;
- u) the doctors have not told him what her medical condition is; and
- v) he did not know what medication she is taking.

14. The member questioned the sponsor. In some instances, her answers were at odds with those given by the applicant. The more important matters in respect of which she gave evidence were the following –

- a) she said rental was \$590 per week, not \$595 as her husband said, of which her husband paid \$147.50 per week;
- b) the rental agreement was in the name of the applicant and the sponsor;
- c) rent was taken every fortnight on a Saturday;

- d) she was unsure of her husband's working hours on Tuesdays and she did not know his working hours and she did not physically observe him going to work;
- e) she did not care how much he earned;
- f) she has a back problem;
- g) the applicant and the sponsor are planning to move to Melbourne;
- h) the sponsor said she had told her sister that the applicant and the sponsor may move to Melbourne but that the sponsor had not told her husband that the sponsor had told the sponsor's sister that they may be moving to Melbourne;
- i) the sponsor was unable to recall what course of study the applicant was undertaking after his masters of accountancy;
- j) the sponsor's parents met the applicant in 2015 after the applicant and the sponsor married in 2012;
- k) the sponsor told her parents about the applicant in 2014 after they were married and the two year gap in telling them was because the applicant and the sponsor were inter-caste and it was not her culture to let her parents know straightaway;
- l) the sponsor did not know why the applicant told the tribunal that they had not told his parents about her marriage;
- m) the sponsor had not spoken to her husband's parents because they were not accepting of their relationship yet her parents were happy with the inter-caste marriage of her brother and her sister;
- n) her parents were not planning to come to Australia in 2016 yet the applicant said they were;
- o) she has three Commonwealth Bank accounts in which she has \$60 to \$70 (inferentially thousands) yet her husband has \$17 (thousand) but she did not care how much he had;
- p) when the sponsor's parents visited, the applicant did not spend much time with them as he was busy;

- q) the applicant travelled to Nepal by himself; and
 - r) the applicant had not accompanied the sponsor to her medical appointments.
15. At page 65 of the transcript, the tribunal member put to the applicant a variety of differences in the answers given on the same point when given by the applicant as well as by the sponsor. At page 66 of the transcript, the tribunal member said the following –
- ... So this information may cause me to conclude that you are not truthful, that you are not living together as husband and wife, that you are not spouses, and that might mean that you might not be able to get the partner visa for which you have applied, okay.*
16. The tribunal then gave the applicant until 16 December 2016 within which to provide additional information.
17. On 19 December 2016, the tribunal decided to affirm the delegate's decision not to grant the applicant a partner (residence) (class BS) visa. The tribunal's reasons were short, 24 paragraphs in all. In essence, the tribunal stated it was not satisfied that –
- a) the parties had, at the time of the tribunal decision, a mutual commitment to a shared life to the exclusion of all others;
 - b) the parties were in a spousal relationship;
 - c) their relationship was genuine and continuing;
 - d) the applicant met cl 801.221(2)(c);
 - e) the applicant met the alternative criteria of cl 801.221(2A), (3), (4), (5) or (6); and
 - f) the applicant met cl 801.221.
18. It is instructive to descend to the detail of the tribunal's reasons.
19. Between paragraphs 4 and 6 of its reasons, the tribunal set out the relevant provisions of the Act and the regulations including the provisions of cl 820.221(2)(a) and the definition of spouse in s 5F and

the evidence required by reg 1.15A(3). In my view, the tribunal correctly paraphrased the salient parts of those provisions.

20. In paragraph 7 of its reasons the tribunal found it was satisfied that the parties were married to one another under a valid marriage for the purposes of s 5F(2)(a). That finding was correct, it seemed to me.
21. In paragraph 8 of its reasons the tribunal said it had considered the documentary evidence in this case as well as the applicant's oral evidence but it had formed the view that the parties had been less than truthful in their oral evidence and the applicant's evidence had changed entirely when the tribunal pointed out inconsistencies.
22. In paragraph 9 of its reasons the tribunal stated that the documentary evidence was not determinative of the genuineness of the relationship.
23. The tribunal addressed the nature of the household in paragraph 10 of its reasons. To interpolate, that was a consideration that reg 1.15A(3) (b) required the tribunal to undertake. After identifying the discrepancies in the evidence on point as was recorded in paragraphs 10(a) to (e), the tribunal found in paragraph 12 that it was not satisfied that the applicant and the sponsor lived together as husband and wife.
24. In paragraphs 14 and 15 of its reasons the tribunal considered the financial aspects of the relationship. Again to interpolate, that was a consideration that reg 1.15A(3)(a) required the tribunal to undertake. The tribunal said it was not satisfied that the applicant and the sponsor discussed their finances, nor that the parties genuinely pooled their resources on a meaningful scale. The tribunal said it was not satisfied the parties genuinely intended to purchase a house together.
25. In paragraph 16 the tribunal addressed the social aspects of the relationship, as required by reg 1.15A(3)(c). The tribunal said it was satisfied that the parties represent themselves to others as being married.
26. In paragraph 17 to 21 the tribunal addressed the nature of the parties' commitment to each other as required by reg 1.15A(3)(d). In essence, the tribunal found that it was not satisfied that the applicant had a mutual commitment to their relationship. Specifically in

paragraphs 17(a) to (g) the tribunal identified significant inconsistencies in the parties' evidence that were not explained to the satisfaction of the tribunal. Those inconsistencies included –

- a) that the sponsor could not state what course beyond the masters of accounting the applicant undertook;
- b) reference to the sponsor's sister being told of the proposed move to Melbourne;
- c) the sponsor's version of events about not telling her parents about the applicant's and her marriage by reason of the inter-caste nature of the marriage being different to the applicant's version of events;
- d) the difference in the evidence of the applicant and the sponsor concerning the applicant's parents' plan to come to Australia in 2016; and
- e) the unfamiliarity about one another's health issues.

- 27. Paragraph 17 had greater precision about those matters.
- 28. Ultimately, the tribunal concluded it was not satisfied the applicant met cl 801.221 of sch 2 to the regulations.
- 29. Before moving to the specific grounds of review, it is useful to point out at this juncture some basic propositions about the tribunal's obligations under the Act.
- 30. First, as the High Court held in *Minister for Immigration and Citizenship v SZGUR*,¹ the tribunal's duty is a duty to review that is inquisitorial. The transcript of the tribunal hearing demonstrated, to my way of thinking, that the tribunal was exploring factual matters that went to the establishment or otherwise of the matters about which reg 1.15A(3) required the tribunal to be satisfied when considering a partner (residence) (class BS) visa.
- 31. Second, as the High Court held in *Minister for Immigration and Citizenship v SZJSS*,² the tribunal is required to give proper, genuine

¹ (2011) 241 CLR 594

² (2010) 243 CLR 164

and realistic consideration to the merits of the application. In my view, the tribunal did in fact give active, intellectual consideration to the applicant's claims as the High Court held the tribunal must do in *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs*.³ Similar observations have been made in other cases more recently and usefully drawn together by the Full Court of the Federal Court of Australia in *BZD17 v Minister for Immigration and Border Protection*,⁴ judgment in which was handed down as recently as 25 June 2018.

32. Third, it was for the applicant to advance whatever evidence or argument he wished and for the tribunal to decide whether his claims had been made out as the High Court held in *Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S154/2002*.⁵
33. Fourth, to the extent that the tribunal made credit findings, it is a fact specific inquiry whether those findings are tainted by jurisdictional error. Several key authorities have so held including *CQG15 v Minister for Immigration and Border Protection*,⁶ *ARG15 v Minister for Immigration and Border Protection*,⁷ *Minister for Immigration and Citizenship v SZRKT*,⁸ *DAO16 v Minister for Immigration and Border Protection*,⁹ and *BZD17 v Minister for Immigration and Border Protection*.¹⁰
34. Those authorities and others have spoken of the need for the tribunal to engage actively with the relevant issues, a point made by Flick J in *Islam v Cash*.¹¹ It seemed to me in this case the tribunal did in fact engage with the elements of reg 1.15A(3) and all of its subparagraphs. In my view, the tribunal did give this case active, intellectual consideration of the propositions advanced by the applicant as corroborated by the sponsor.

³ (2003) 216 CLR 473

⁴ [2018] FCAFC 94

⁵ [2003] HCA 60

⁶ (2016) 253 FCR 496

⁷ (2016) 250 FCR 109

⁸ (2013) 212 FCR 99

⁹ [2018] FCAFC 2

¹⁰ [2018] FCAFC 94

¹¹ [2015] FCA 815

35. With that lamentably long narration of the factual matters and the tribunal decision, let me now turn to the grounds of review as presently pressed.

Ground 1

36. Expressed verbatim, ground 1 was as follows –

The second respondent made a decision which was irrational, capricious and unreasonable.

Particulars

- (a) treating differences between the evidence of the Applicant and the Sponsor ('the parties') such as the former says the current rent was \$595 whereas the latter said \$590 as sufficient to justify the conclusion that while the parties lived together they did so as husband and wife.*
 - (b) dismissing documentary evidence and photographs upon the basis that such evidence can be obtained if the relationship is not genuine (without making any finding about the documents themselves or the photographs).*
 - (c) failing to consider the possibility that relevantly minor discrepancies in evidence were not necessarily indicative of anything and indeed were to be expected.*
37. Of this ground, the applicant's counsel made a collection of submissions in his written submissions filed 11 July 2018. Some propositions in those submissions were not especially illuminating. Let me catalogue them –
- a) the content in paragraph 4 that the tribunal's decision "was a bizarre form of credibility observations";
 - b) the contention in paragraph 13 that the tribunal statements at paragraph 10 of its reasons were "extraordinary";
 - c) the contention in paragraph 15 that "the list of inconsistencies is so extraordinary that it deserves to be quoted in full";
 - d) the comment in paragraph 17 that "no rational person could say that this was inconsistency let alone inconsistency which could trouble a decision maker";

- e) the comment at paragraph 18 that “this is a Tribunal out of control”;
 - f) the comment in paragraph 20 that “what is problematic is the AAT’s minute and irrational search for inconsistency”.
38. Rather than attributing submissions to specific grounds of review the applicant’s counsel bundled together 43 paragraphs of criticisms of the tribunal, citing only two authorities, the significance of which went unexplained. I found the applicant’s submissions at times difficult to follow.
39. Doing the best I could to divine some logical threads to the presentation by the applicant’s counsel of his submissions, the following points seem to emerge –
- a) the applicant contended that the tribunal erred jurisdictionally when pointing out the tribunal’s focus on inconsistencies in the applicant’s and the sponsor’s evidence;
 - b) those inconsistencies were at best inconsequential;
 - c) the tribunal ignored corroborative evidence concerning certain aspects of the applicant’s financial evidence; and
 - d) the tribunal’s consideration of the applicant’s overseas travel was unreasonable.
40. So far as irrationality was asserted, it was held in *DAO16* that to establish jurisdictional error based on irrational or illogical findings of fact or reasoning, extreme irrationality and illogicality must be demonstrated and measured against the standard that it is not enough for the question of fact to be one on which reasonable minds may come to different conclusions. Even emphatic disagreement with the tribunal’s reasoning would not be sufficient to make out illogicality. It was pointed out in *Minister for Immigration and Citizenship v SZMDS*¹² that a high degree of caution must be exercised before finding that adverse credit findings expose jurisdictional error in order to ensure that a court undertaking judicial review does not impermissibly embark upon a review of the merits of a visa applicant’s

¹²(2010) 240 CLR 611

claims. Similarly, in the same case, the High Court held that a decision might be irrational if there is no logical connection between the evidence and the conclusions drawn.

41. In this case, Mr Young for the applicant submitted that extreme illogicality existed here. In this case, I was unable to conclude that there was no logical connection between the evidence and the conclusions drawn. Here, the applicant was required to meet the elements of reg 1.15A(3). He had to persuade the tribunal about –
 - a) financial aspects of the relationship;
 - b) the nature of the household;
 - c) the social aspects of the relationship; and
 - d) the nature of the persons committed to each other.
42. The tribunal in fact addressed each. In the passages above I have set out where in the tribunal's reasons each of those subparagraphs were addressed. In reaching its conclusions about whether the applicant met each of the matters in reg 1.15A(3) the tribunal assessed whether the version of events given by the applicant was to be accepted. In many instances, the tribunal did not accept the version of events given by the applicant. It regarded variances in the version of the applicant with that of the sponsor to be such that the tribunal was not satisfied that the relevant information given by the applicant demonstrated that the element in the regulation was made out. The applicant's counsel said some of the matters that the tribunal said the applicant gave an inconsistent account were *de minimis*. When aggregated, those inconsistencies caused the tribunal to reach a point of view stating that it was not satisfied the applicant had made out its case. That course was appropriate. In my view, that course was far from irrational. It was entirely proper. Further, in adopting that approach, the tribunal did not engage in extreme illogicality. Put differently, it could not be said the tribunal's conclusions that the applicant had not made out his case in relation to reg 1.15A(3), or, indeed, in relation to cl 801.221 lacked an evident and intelligible justification as that phrase was used in

*Minister for Immigration and Citizenship v Li and Anor*¹³ and in *Minister for Immigration and Border Protection v Singh*.¹⁴

43. I do not agree with the applicant's contentions that the tribunal's decision was irrational, capricious and unreasonable.
44. It seemed to me that in reality the applicant was complaining that the tribunal did not make findings of fact in his favour. It is not permissible for me to undertake a merits review, a point well made in an array of decisions including *Chan Yee Kin v Minister for Immigration and Ethnic Affairs*,¹⁵ *Attorney-General (NSW) v Quin*,¹⁶ *Australian Broadcasting Tribunal v Bond*¹⁷ and *Minister for Immigration and Ethnic Affairs v Wu Shan Liang*.¹⁸
45. In my view, ground one failed.

Ground 2

46. Under this ground the applicant argued that the tribunal adopted a legally erroneous test of marriage contrary to s 5F of the Act.
47. I do not agree.
48. The minister submitted correctly that the applicant provided no particulars about his allegations on this point. While it was open to me to dismiss this ground on account of the absence of particulars. Relying on such cases as *WZATH v Minister for Immigration and Border Protection*,¹⁹ *BHK15 v Minister for Immigration and Border Protection*,²⁰ *AQN15 v Minister for Immigration & Anor*²¹ and *WZAVW v Minister for Immigration and Border Protection*,²² it seemed to me that this ground was to be dismissed for the simple reason that the tribunal in fact applied a consideration of s 5F. The tribunal found the parties were validly married, but s 5F required the applicant to show that all other elements of s 5F(2) were met. He failed to do so. But the

¹³(2013) 249 CLR 332

¹⁴ [2014] FCAFC 1

¹⁵(1989) 169 CLR 379

¹⁶ (1990) 170 CLR 1

¹⁷(1990) 170 CLR 321

¹⁸ (1996) 185 CLR 259

¹⁹[2014] FCA 969

²⁰[2016] FCA 569

²¹ [2016] FCA 571

²² [2016] FCA 760

tribunal correctly assessed whether the elements of s 5F(2)(b), (c) and (d) were met. Each was conjunctive. Each needed to be met. The tribunal applied the correct test.

49. In my view, ground two failed.

Ground 3

50. The applicant asserted that the tribunal adopted tests of a marital relationship unauthorised by law. No particulars were given. The minister said the tribunal properly considered the financial aspect of the relationship as required by reg 1.15A(3)(a). I agree. No error was shown under ground 3.

Ground 4

51. The applicant submitted that the tribunal rejected corroborative evidence. No particulars were given of the corroborative evidence allegedly rejected. Without particulars, this ground was meaningless. I dismiss it.

Ground 5

52. Under this ground, the applicant argued that the tribunal failed to have regard to the mandatory requirements of reg 1.15A. No particulars were given.
53. I disagree with the assertion in this ground. For the reasons given above the tribunal in fact addressed each element of reg 1.15A. The tribunal stated it was required to consider those matters in paragraph 6 of its reasons. It then addressed them. None of the matters in the regulation were overlooked. To the extent that the applicant complained that reg 1.15A(3)(d) was not expressly considered, in paragraphs 10 and 12 of the tribunal's reasons the relevant issue was canvassed in express terms.
54. In *He v Minister for Immigration and Border Protection*,²³ the court held that compliance with the reg 1.15A is largely impressionistic. That accords with my construction of events.

²³[2017] FCAFC 206

Ground 6

55. Ground six was not pressed.

Ground 7

56. Under this ground, the applicant asserted that the tribunal erred by treating the sharing of housework and the joint responsibility for children as being prerequisites for a finding of a spousal relationship.

57. The tribunal considered those issues at paragraph 12 of its reasons. That did not mean the tribunal treated those issues as prerequisite, as alleged.

58. This ground failed.

59. From the foregoing it is apparent that all grounds of review failed.

Ground 6

60. Ground eight was not pressed.

A final word about *ex tempore* judgments

61. In this case, I delivered *ex tempore* reasons. I did so having read and considered the observations of the Full Court in *BZD17 v Minister for Immigration and Border Protection*²⁴ as well as the observations in *Symons v White (Sydney Catholic Schools)*.²⁵ It seemed to me that this case was a clear case in which no jurisdictional error was demonstrated and that it was undesirable for me to delay in providing the parties with my reasons in this case. That said, including the time taken to hear argument, I have spent well over seven hours analysing the material in this case and in considering and assessing the arguments advanced by both parties. Under no circumstances could the parties say that this case had not been the subject of careful consideration notwithstanding that these reasons were given *ex tempore*.

²⁴ [2018] FCAFC 94

²⁵ [2018] FCA 949

Conclusion

62. The application filed 11 January 2017 is dismissed. I order the applicant to pay the minster's costs in the fixed sum of 7 206.
63. May I record my thanks to counsel for their excellent verbal presentation of this case.

I certify that the preceding sixty-three (63) paragraphs are a true copy of the reasons for judgment of his Honour Judge Wilson

Date: 3 August 2018